

STATE OF WASHINGTON



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OFFICE OF  
INSURANCE COMMISSIONER

INSURANCE COMMISSIONER  
LEGAL AFFAIRS DIVISION

*In the Matter of*

No. 09 - 0078

**MGA Marketing, Inc.,**

**ORDER REVOKING LICENSE**

*Licensee.*

**TO:** Tera D. Gardner  
PO Box 821789  
Vancouver, WA 98682

**AND** MGA Marketing Inc.  
4317 NE Thurston Way Ste 220  
Vancouver, WA 98662

**IT IS ORDERED AND YOU ARE HEREBY NOTIFIED** that the license of the business entity MGA Marketing, Inc. is **REVOKED**, effective June 25, 2009, pursuant to, among other provisions, RCW 48.17.530.

**THIS ORDER IS BASED ON THE FOLLOWING:**

**A. THE LICENSEE.**

1. The business entity MGA Marketing, Inc., (hereinafter "MGA") holds a license granted by the Office of the Insurance Commissioner (hereinafter "OIC") as an agent to sell life and disability insurance in Washington State. Gary A. Wyche, a former OIC licensee, applied for MGA's license as its "President." Tera D. Gardner, a current OIC licensee, is MGA's Secretary.

**B. BACKGROUND AND RELEVANT FACTS.**

2. On September 8, 2005, Mr. Wyche stipulated to a revocation of both his Oregon insurance agent's license and the Oregon insurance agent's license of "Oregon Country Associates" (hereinafter "OCA"). Mr. Wyche was OCA's President. Mr. Wyche's license revocation concerned events between 2003 and 2005 where he failed to deposit insurance premiums into a trust account, used fraudulent, coercive, or dishonest practices in business, and made false statements to the Oregon insurance regulator. OCA's license

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revocation concerned OCA's failure to report Mr. Wyche's violations to the Oregon insurance regulator. Based on Mr. Wyche's stipulation, on September 19, 2005, the Oregon insurance regulator entered its order revoking Mr. Wyche's and OCA's Oregon licenses.

3. On March 15, 2006, based on the Oregon license revocation, the OIC entered Order No. 06-158 revoking Mr. Wyche's license. On September 28, 2006, Mr. Wyche consented to the entry of a second order, in which Mr. Wyche agreed to voluntarily relinquish his Washington insurance agent's license and further agreed to no longer "engage in the business of insurance as set forth in the Insurance Code, RCW 48."
4. On February 8, 2007, Mr. Wyche incorporated "GW Enterprises, LLC" (hereinafter "GWE") in Washington as a Limited Liability Company. Mr. Wyche is GWE's Agent and Manager.
5. Also on February 8, 2007, Mr. Wyche and Ms. Gardner entered into "A Management and Marketing Agreement" [sic]. The agreement granted GWE certain authority over MGA's activities in furtherance of MGA's desire "to retain and continue the unique experience, abilities, and services of GWE, as an independent contractor." Ms. Gardner signed this agreement on behalf of MGA as MGA's "Corporate Secretary," while Mr. Wyche signed both "as an individual" and as "Operating Manager" of GWE.
6. During at least two subsequent Washington insurance transactions, one in October of 2007 and one in late 2008, Mr. Wyche solicited an insurer's annuity products to at least one Washington consumer. On these two occasions, Mr. Wyche represented himself as the insurer's agent, while Ms. Gardner signed the insurer's forms as the insurer's agent. In connection with these transactions, Ms. Gardner also identified herself to the consumer as an MGA representative, including as "VP, Administration" [sic] of MGA.
7. On September 29, 2008, a Washington consumer tendered to Mr. Wyche a personal check in the amount of \$45,000, as payment for an American National Insurance Company (hereinafter "ANICO") annuity. The consumer wrote on the check's payee line that the check was payable to "ANICO." Mr. Wyche handed the check to Ms. Gardner, who photocopied the check and also completed a "conditional receipt" as ANICO's agent, acknowledging receipt of the check amount as payment for the annuity on behalf of ANICO. Ms. Gardner did not send the check to ANICO and did not deposit the check into any separate premium trust account. Instead, Ms. Gardner gave the check to Mr. Wyche. Without the consumer's authorization, Mr. Wyche altered the payee line to add "GW Enterprises LLC," then he deposited this check into his GWE account held with a Washington credit union. Mr. Wyche also did not provide the funds to ANICO.
8. On January 30, 2009, worried that ANICO had not yet issued any statements about the

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annuity, the consumer called Mr. Wyche's business telephone numbers. The consumer found those numbers had been disconnected. The consumer contacted ANICO and learned that no payment for the annuity had ever been received. The consumer drove to Mr. Wyche's office address and found the door blinds closed and the office empty. The consumer eventually located Mr. Wyche at his residence. The consumer also observed Ms. Gardner working within an office inside the residence. The consumer confronted Mr. Wyche about the check and the annuity. Mr. Wyche said all records were in storage and that he would need to get back to the consumer. The consumer contacted Mr. Wyche's Washington credit union holding the GW Enterprises LLC account. The credit union confirmed Mr. Wyche definitely deposited the check. The credit union advised the consumer to contact the police, which the consumer did.

9. On February 6, 2009, the credit union's Loss Control Specialist, Kim Thompson, stated that she believes Mr. Wyche used the \$45,000 he deposited "for personal use."
10. On April 20, 2009, police went to Mr. Wyche's residence in connection with the aforementioned 2008 transaction. Ms. Gardner was again observed to be apparently working at the residence. The police arrested and jailed Mr. Wyche. The Clark County Washington Prosecuting Attorney later filed in the Clark County Superior Court a six-count Information, alleging Mr. Wyche is guilty of the crimes of first degree theft (three counts), forgery, money laundering, and acting as an agent without a license.
11. On April 23, 2009, on behalf of MGA, Ms. Gardner wrote MGA's website developer an e-mail that stated "Looks like MGA Marketing Inc will no longer be doing business. Can you please disable the website."

### **C. VIOLATIONS OF THE INSURANCE CODE.**

12. Based on the foregoing, MGA has violated various provisions of the Washington State Insurance Code, Title 48 RCW, including the following:
  - a. MGA violated RCW 48.01.030 by failing to preserve inviolate the integrity of insurance.
  - b. MGA violated RCW 48.17.480(2) by failing to promptly account for and failing to promptly pay to the insurer entitled thereto premium funds which its affiliated agent, Ms. Gardner, received in her fiduciary capacity.
  - c. MGA violated RCW 48.17.480(3) by failing to promptly account for and failing to promptly pay to the insurer entitled thereto premium funds which its affiliated agent, Ms. Gardner, received in her fiduciary capacity.

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- d. MGA violated RCW 48.17.600(1) by failing to account for and maintain in an account, separate from all other business and personal funds, premium funds which its affiliated agent, Ms. Gardner, received in her fiduciary capacity.
- e. MGA violated RCW 48.17.490(2) and (3) by sharing or allowing commissions or other compensation with a person not licensed for the procurement of applications for or the placement of kinds of insurance for which he himself was not then licensed to procure or place.
- f. MGA violated RCW 48.30.190(1) by willfully collecting a sum as premium for insurance, which insurance was not then provided and was not in due course to be provided by an insurance policy issued by an insurer as authorized by the Washington State Insurance Code, Title 48 RCW.
- g. MGA violated RCW 48.17.530(1)(a) by submitting to the OIC a license application that failed to reveal information about MGA or its owners, partners, officers or directors which, had such information then been known to the OIC, could have resulted in MGA's license then being refused or revoked.
- h. MGA violated RCW 48.17.530(1)(c) by obtaining or attempting to obtain its license through misrepresentation.
- i. MGA violated RCW 48.17.530(1)(e) by intentionally misrepresenting the terms of an actual or proposed application for insurance.
- j. MGA violated RCW 48.17.530(1)(h) by showing itself to be, and is also deemed by the Insurance Commissioner to be, incompetent, untrustworthy, and a source of injury and loss to the public.
- k. MGA violated RCW 48.17.530(1)(b) by willfully violating or knowingly participating in the violation of the aforementioned provisions of the Washington State Insurance Code, Title 48 RCW, including by facilitating the transaction of insurance by an unlicensed agent, Mr. Wyche.
- l. One or more of MGA's partners, officers, or managers acting on behalf of MGA knew or should have known of the foregoing violations and the violations were neither reported to the OIC nor were corrective actions taken, in violation of RCW 48.17.530(2).

Accordingly, MGA's license is revoked pursuant to RCW 48.17.530.

**IT IS FURTHER ORDERED** that you immediately return your license certificate to the

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Commissioner on or before the effective date of the revocation of your license, as required by RCW 48.17.530(4).

**NOTICE CONCERNING YOUR RIGHT TO A HEARING.** Please note that a detailed summary of your right to contest this Order is attached. Briefly, if you are aggrieved by this Order, RCW 48.04.010 permits you to demand a hearing. Pursuant to that statute, and others, you must demand a hearing, in writing, within 90 days after the date of this Order, which is the day it was mailed to you, or you will waive your right to a hearing. Your demand for a hearing must specifically state the reasons why you think this Order should be changed. If your demand for a hearing is received by the Commissioner before the effective date of the revocation, then the revocation will be stayed (postponed) pending the hearing, pursuant to RCW 48.04.020. Upon receipt of your demand for hearing, you will be contacted by an assistant of the Chief Hearing Officer to schedule a teleconference with you and the Insurance Commissioner's Office to discuss the hearing and the procedures to be followed.

Please send any demand for hearing to the Insurance Commissioner, Attention John Hamje, Deputy Insurance Commissioner, Office of the Insurance Commissioner, P.O. Box 40257, Olympia, Washington 98504-0257.

ENTERED AT TUMWATER, WASHINGTON, this 5<sup>th</sup> day of June, 2009.

**MIKE KREIDLER**

Insurance Commissioner

By

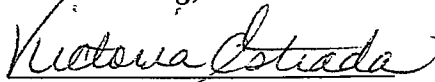
**JOHN F. HAMJE**

Deputy Insurance Commissioner  
Consumer Protection Division

**DECLARATION OF MAILING**

I certify under penalty of perjury under the laws of the State of Washington that on the date listed below, I mailed or caused delivery of a true copy of this document to **MGA Marketing, Inc.**

Dated: June 5, 2009  
At Tumwater, Washington

  
Victoria Estrada

## **NOTICE OF YOUR RIGHT TO A HEARING**

You have the right to demand a hearing to contest this Order. During this hearing, you can present your argument that the Order should not have been entered for legal and/or factual reasons and/or to explain the circumstances surrounding the activities which are the subject of this Order. You may be represented by an attorney if you wish, although in some hearings before this agency parties do choose to represent themselves without an attorney.

Your Demand for Hearing should be sent to John F. Hamje, Deputy Insurance Commissioner, Office of the Insurance Commissioner, P.O. Box 40257, Olympia, WA 98504-0257, and must briefly state how you are harmed by this Order and why you disagree with it. You will then be notified both by telephone and in writing of the time and place of your hearing. If you have questions concerning filing a Demand for Hearing or the hearing process, please telephone the Hearings Unit, Office of the Insurance Commissioner, at 360/725-7002.

Your Demand for Hearing must be made within 90 days after the date of this Order, which is the date of mailing, or your Demand will be invalid and this Order will stand. If your Demand for Hearing is received before the effective date of this Order, the penalties contained in the Order will be stayed (postponed) until after your hearing.

It is important to know that if you demand a hearing, you will have two options for how it will be handled:

Option 1: Unless you specifically request Option 2, your hearing will be presided over by an administrative law judge from the Office of the Insurance Commissioner. Under this option, upon receipt of your Demand for Hearing, the Insurance Commissioner may refer the case to an administrative law judge. The administrative law judge is an individual who has not had any involvement with this case. The administrative law judge will hear and make the final decision in the case without any communication, input or review by the Insurance Commissioner or staff or any other individual who has knowledge of the case. This administrative law judge's final decision may uphold or reverse the Commissioner's action or may instead impose any penalties which are less than those contained in the Order.

Option 2: If you elect, your hearing will be presided over by an administrative law judge from the Office of Administrative Hearings. That administrative law judge will issue an initial or recommended decision which will then be sent to the Insurance Commissioner. The Insurance Commissioner, or his designee, will review the initial decision and make the final decision. The Insurance Commissioner's final decision in the case may uphold, reverse or modify the initial decision, thereby changing the penalty which is recommended in the initial decision. In writing the final decision, the Insurance Commissioner is not bound by the findings of facts or conclusions of law which were made in the initial decision.